

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

BOBBY WAYNE SAVAGE

PLAINTIFF

v.

Civil No. 05-5037

SHERIFF KEITH FERGUSON; and  
OFFICER SCOTT TURNER

DEFENDANTS

**ORDER**

On December 27, 2005, defendants filed a summary judgment motion (Doc. 33). To assist plaintiff in responding to the summary judgment motion, the undersigned is propounding a questionnaire. The court will consider plaintiff's response to the questionnaire in issuing a report and recommendation on the summary judgment motion.

For this reason, Bobby Wayne Savage is hereby directed to complete, sign, and return the attached response to defendants' summary judgment motion on or before **March 7, 2006**. **Plaintiff's failure to respond within the required period of time may subject this matter to dismissal for failure to comply with a court order.**

IT IS SO ORDERED this 7th day of February 2006.

/s/ Beverly Stites Jones

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

BOBBY WAYNE SAVAGE

PLAINTIFF

v.

Civil No. 05-5037

SHERIFF KEITH FERGUSON; and  
OFFICER SCOTT TURNER

DEFENDANTS

**RESPONSE TO SUMMARY JUDGMENT MOTION**

TO: BOBBY WAYNE SAVAGE

These questions and answers will serve as your response to defendants' motion for summary judgment. You may use additional sheets of paper in responding to these questions.

You must file this response by **March 7, 2006**.

1. You were serving a term of imprisonment at the Arkansas Department of Correction (ADC) on July 1, 2004.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain.

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2. On November 20, 2003, you were given a restricted medical classification at the ADC. Among other things, your job assignments were to be restricted to assignments not requiring handling or lifting of heavy materials in excess of ten pounds or requiring overhead work for a period of time in excess of four hours.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 1 at page 50.

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3. Note was made of the fact that you were to be given one arm duty with your left arm because you had difficulty raising your right arm secondary to a shoulder deformity.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 1 at page 50.

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4. You underwent a health examination at the ADC on November 20, 2003, and reported a history of bi-polar disorder, chronic low back pain secondary to a motor vehicle accident a few years ago, right knee and left hip with dislocated clavicle.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 1 at page 53.

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5. On December 15, 2003, you were involved in an altercation in the Benton County Detention Center (BCDC).

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain.

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6. You were taken to the nurse by the guards and the nurse noted a large knot on top of your right shoulder and scheduled you to see the doctor.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain.

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7. On December 15, 2003, your right shoulder was x-rayed at Northwest Medical Center of Benton County. The radiologist noted a “grade 3 separation of the acromioclavicular joint. Heterotopic bone projects over the inferior margin of the distal clavicle. This raises the possibility that the separation is old.”

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain.

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8. The injury was described as possibly chronic.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain.

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9. On June 25, 2004, you were booked into the BCDC from the Varner Unit of the ADC for court appearances.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 3.

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10. When you were booked in on June 25, 2004, you completed a medical questionnaire on which you reported hip and back problems.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 4.

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11. You also completed a medical request form on which you stated you fell down the steps at prison and hurt your back and hip and had been placed on a two week lay in for bed rest.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 5.

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12. On June 28, 2004, Deputy McPherson saw you lying on your bunk and did a shake down of your cell. Deputy McPherson found extra towels in your cell.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 8.

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13. On June 28, 2004, at approximately 1045 you flooded your cell and the day-room in D-pod.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 8.

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14. You admitted to flooding your cell and were disciplined. You received thirty days lock down and loss of privileges.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 9.

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15. You were seen by Dr. Neil Mullins on Monday, June 28, 2004. You told Dr. Mullins you fell in the shower the prior Wednesday.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page

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16. Dr. Mullins noted that your complaints were far out of proportion to your history and Dr. Mullins believed you were tremendously exaggerating your symptoms.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page

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17. Dr. Mullins gave you an injection of Decadron and prescribed Ibuprofen, 600 mg., three times a day, for five days.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page

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18. On June 30, 2004, Deputy Jonathan Hall heard someone screaming at pod control. He stopped feeding the inmates in D-130 and locked all inmates in the day-room back in their cells.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 11.

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19. When Deputy Hall got to pod control he saw you pushing Deputy Davis.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 11.

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20. Deputy Davis told you to stop and put your hand behind your back.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 11.

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21. You refused telling Deputy Davis: "F— you, f----- don't touch me bitch I will kick your ass."

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 11.

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22. You pushed Deputy Davis again.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 11.

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23. Deputy Hall then placed you on the floor. You put your left hand under your head and Deputy Hall grabbed your right hand and put it behind your back.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 11.

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24. You attempted to bite Deputy Davis' hand. When Deputy Hall tried to grab your left hand, you also tried to bite him.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 11.

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25. Deputy Hall used a pressure point under your nose to free your hand. Deputy Davis then got your left hand and placed it behind your back. Deputy Plotz put handcuffs on you.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 11.

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26. You were stood up and Deputy Plotz escorted you to lock-down.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 11.

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27. On June 30, 2004, you submitted a grievance. In it you stated that while you were being escorted to B-pod from D-149 by Deputy Plotz you met Deputy Davis in the hall and told him that you wouldn't always be locked up. You stated you spit at Deputy Davis.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 12.

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28. You spit on Deputy Davis a second time.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 19.

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29. Deputy Davis put you against the wall and attempted to put you in a submission hold.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 19.

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30. You maintained Deputy Davis attempted to choke you and demanded that pictures be taken of your neck.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at pages

12, 13, and 14.

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31. As a result of the incident, you were charged with threatening another person, refusing to obey orders of jail staff, using obscene language toward jail staff, and assaulting jail staff.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 20.

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32. You admitted to spitting on Davis, cursing him, and telling him you wouldn't be in prison forever. However, you stated you were not a threat because all the other inmates were locked down.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 20.

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33. You were found guilty of the disciplinary violations and given thirty days lock-down and loss of privileges.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 20.

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34. As a result of the incident criminal charges were also brought against you for aggravated assault upon an employee of a correctional facility.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at pages 21 to 23.

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35. You plead guilty to this charge and were sentenced to five years in prison.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain.



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36. On July 1, 2004, you had been to court and Deputy Turner brought you and other inmates back to the BCDC.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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37. You used the restroom in the intake area without permission and leaned against the wall.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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38. Leaning against the wall is against jail policy.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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39. Major Drake saw your actions from the booking area and ordered you to get off the wall.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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40. You stated that you were not on the wall.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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41. Deputy Turner saw that you were leaning on the wall and told you to move away.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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42. Major Drake came out of the booking area and explained to you that the rules were that no inmate is to use the restroom in the intake area or lean against the wall.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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43. After Major Drake left, you kept saying you weren't doing anything wrong.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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44. Turner told you to: “Shut the f— up.”

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants’ exhibit 2 at page 24.

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45. You replied: “F— you, mother f-----.”

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants’ exhibit 2 at page 24.

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46. Turner then approached you.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants’ exhibit 2 at page 24.

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47. As Turner approached, you had both fists in a closed fighting position by your sides.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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48. Turner grabbed you by the shirt by both shoulders and put you against the nearest wall.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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49. You kept calling Turner a motherf-----.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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50. Turner put you on the ground stomach first.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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51(A). Turner put both your hands behind your back.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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(B). Once your hands were behind your back, did Turner place handcuffs on you?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_.

If you answered yes, please describe how he placed you in handcuffs.

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If you answered no, please state whether he held you hands behind your back or what he did with your hands and arms.

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(E). Please describe any physical injuries you suffered as a result of Turner's use of force. In doing so, please state what you believe caused the physical injury and describe any symptoms you experienced, the severity of those symptoms, and how long it took you to recover from the injuries.

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(F). Turner did not know you had previously injured your shoulder.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain.

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(G). At the time, you did not tell Turner about your prior shoulder injury or complain of any pain.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain.

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52. Turner was ordered to take you into the booking area and put you in a holding cell.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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53. Turner put you in a holding cell.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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54. Once in the holding cell, you banged on the door and yelled obscenities.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 24.

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55. Following the incident, you asked for medical attention for your arm.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 28.

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56. You were seen in the jail clinic and then sent to the emergency room of Northwest Medical Center of Benton County.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 28.

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57. The radiologist reported a complete dislocation of the acromioclavicular joint which by history was acute. Ossific or calcific densities were noted suggesting there was an old injury as well. No evidence of a fracture or destructive lesion was found.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain.

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58. Your arm was placed in an immobilizer and you were prescribed pain medication.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain.

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59. You were seen by Dr. Mullins at the BCDC on July 6, 2004, for follow up care.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 39.

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60. Dr. Mullins noted you had a dislocated right shoulder.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 39.

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61. Dr. Mullins prescribed pain medication to be taken up to three times a day and a blanket as needed for warmth.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 39.

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62. Dr. Mullins indicated he would follow up with the ADC to see if you should be sent to an orthopedic specialist or if the ADC would rather wait until you got back to prison.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 39.

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63. You were released to the ADC on July 9, 2004.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 2 at page 42.

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64. When you returned to the ADC, you were seen by medical staff and you were told to keep your arm in a sling for three weeks and then start gentle range of motion exercises. You were also given pain medication.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 1 at page

59.

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65. Note was made that your right shoulder was dropped and when you moved it the least there was an obvious separation.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 1 at page 60.

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66. On July 21, 2004, you were seen in the orthopedic clinic of the ADC. A new x-ray was ordered and you were to have no use of your right hand.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Without knowledge to agree or disagree\_\_\_\_\_.

If you disagree, explain. In explaining, please refer to defendants' exhibit 1 at page 58 & 72.

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69(A). Sheriff Ferguson was not present on July 1, 2004, when the incident occurred between you and Turner.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Without knowledge to agree or disagree \_\_\_\_\_.

If you disagree, explain.

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(B). Did you ever communicate directly with Sheriff Ferguson about the incident?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_.

If you answered yes, please describe your communication with the sheriff.

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Detail below any further response you would like to make to defendants' summary judgment motion. If you have any exhibits you would like the court to consider, you may

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I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS  
TRUE AND CORRECT.

EXECUTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2006.

\_\_\_\_\_  
BOBBY WAYNE SAVAGE